UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

MONDELĒZ GLOBAL, LLC

and Case 13-CA-170125

BAKERY, CONFECTIONERY, TOBACCO WORKERS & GRAIN MILLERS LOCAL UNION NO. 300, AFL-CIO-CLC.

RESPONDENT'S ANSWERING BRIEF TO COMPLAINANT'S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION

Richard L. Samson, Esq.
Norma Manjarrez, Esq.
OGLETREE, DEAKINS, NASH, SMOAK & STEWART
155 North Wacker Drive - Suite 4300
Chicago, IL 60606
Phone: (312) 558-1220
Facsimile: (312) 807-3619

Dated: September 25, 2017

INTRODUCTION

Pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board ("Board"), 29 C.F.R. §102.46, on September 11, 2017, the Charging Party (sometimes referred to as the "Union") filed exceptions combined with a supporting brief to the August 14, 2017 decision of Administrative Law Judge ("ALJ") Charles Muhl.[1] Respondent Mondelēz Global, LLC (the "Respondent" or "MG") now files its answering brief to the Charging Party's combined exceptions and brief. For the reasons discussed below, the Respondent respectfully requests that the Board adopt the ALJ's Decision to dismiss the complaint in its entirety, affirming his finding that Respondent did not violate Section 8(a)(5) by refusing to provide all of the information requested by the Union in its January 27, 2016 letter. (ALJD 10–15).[2]

THE CHARGING PARTY'S EXCEPTIONS

The Charging Party fails to specify the question of fact and/or law to which exception is taken and further fails to identify the part of the ALJ's decision to which exception is taken, contrary to the requirements of Section 102.46 of the Board's Rules and Regulations. Instead, the Union asserts the ALJ adopted his own view of the agreement in determining relevancy. (CP Brief at 9).

---

[1]References to the ALJ's Decision are set forth as (ALJD _____). References to the stipulated record are set forth as "R at ¶___." References to the exhibits in the stipulated record are set forth as "Jt. Ex.___." References to Charging Party's Exceptions Brief are set forth as (CP Brief at ___."

[2] In the event the Board accepts the Charging Party's exceptions, the Respondent respectfully requests that the Board consider the Respondent's earlier motion for a protective order (as discussed more thoroughly in the Respondent's initial brief to the ALJ) and require the Charging Party to comply with the request made therein.

ARGUMENT

The ALJ correctly found that under Board precedent the Respondent did not violate Section 8(a)(5) of the National Labor Relations Act (the "Act") by refusing to provide all of the information requested by the Union in its January 27, 2016 letter where the record evidence was plainly insufficient to establish the necessary relationship between the alleged contract violations in the grievance and the information requested. The Charging Party's assertions based on arbitration decisions citing inapposite contract provisions have no bearing on the question of relevancy. The Charging Party's assertions are completely unsupported by relevant legal authority and contrary to well established precedent and the record evidence.

A. The Charging Party's Exceptions to the ALJ's Finding that the Union Failed to Establish Relevance Must be Denied Because the Charging Party Fails to Present Points of Fact and Law in Support of its Exceptions

It is well established that the duty to supply information under the Act is not absolute. *See Detroit Edison Co. v. NLRB,* 440 U.S. 301, 303 (1979) ("the duty to bargain collectively, imposed by Section 8(a) of the NLRA, includes a duty to provide *relevant* information requested by the union for the proper performance of its duty as the employees' bargaining representative") (emphasis added). The duty to provide information is limited by considerations of relevance. *Id.* Indeed, "[a] union's base assertion that it needs information to process a grievance does not automatically oblige the employer to supply all the information in the manner requested." *Id.* at 314; *see also Rice Growers Ass'n of Cal.*, 312 NLRB 837 (a broad or vague request will not trigger an employer's duty to supply the requested information). Where the Union's information demand seeks information regarding non-unit employees, the Union has the burden of establishing relevancy. *See USPS,* 310 NLRB 701 (1993). To obtain "information with respect to matters occurring outside the unit, the standard is somewhat narrower … and relevance is

required to be somewhat more precise." *Ohio Power Co.*, 216 NLRB 987, 991 (1975). Similarly, in order to obtain information such as employer profits and production figures a union must, by reference to the circumstances, "demonstrate more precisely the relevance of the data it desires." *Coca-Cola Bottling Co.,* 311 NLRB 424, 425 (1993).

The ALJ correctly found that the Respondent had no statutory obligation to provide the requested information because the Union failed to establish the relevance of the information in dispute. It is worth repeating here that the Union's request for the Salinas labor agreement (as well as information related to the Salinas employees' terms and conditions of employment and how the Salinas labor union came into being) unquestionably dealt with *non-unit employees*.

In its exceptions brief, the Union continues to argue —without any citation to any case law— that the manner in which the Salinas employees came to be represented by a union is relevant to determining if the Respondent complied with the NAALC and that if it did not then the fact that it violated the NAALC standards may be considered by an arbitrator in determining whether the Union's rights under the recognition clause of the labor agreement were violated by the Respondent. First, as the ALJ correctly found, the recognition clause in Article 1 of the labor agreement was not an independent basis for the Union's grievance. (ALJD 11 n.14). As evidenced in the Union's March 11, 2016 letter, the recognition clause was tangential to the Union's claim that the Respondent violated Section 8(a)(5) of the Act by not providing notice and the opportunity to bargain over the transfer of unit work. (ALJD 11 n.14; Jt. Ex. 13). Second, the ALJ correctly found, "there is simply no connection between the process by which a union became the representative of the Salinas employees and the Union's representational duties for the Chicago unit." (ALJD 13–14). That the requested information is irrelevant to the issues under consideration was further underscored by the fact that, ultimately the Union's

submission to the Department of Labor's Office of Trade and Labor Affairs claiming a violation of the NAALC was denied review by the United States Department of Labor's Office of Trade and Labor Affairs. (Jt. Ex. 15). Against this backdrop, the arbitration decisions cited by the Charging Party have no bearing on whether the requested information was relevant to the Union's grievance claiming that the transfer of bargaining unit work from its Chicago facility to its Salinas facility violated the parties' labor agreement.

Charging Party first cites to *Signature Flight Support*, 101 LA 158 (Bognanno, 1993), stating the "Arbitrator held that the location of the work site in the recognition clause of a bargaining agreement did not limit the right of the union to apply the terms of the agreement at a new employer location." (CP Brief at 9). *Signature Flight Support* has no authority over the issue of relevance in this case. Moreover, there was no request for evidence or subpoena at issue in that matter (or in any of the other arbitration decisions cited by the Charging Party). In his interpretation of the recognition clause in the parties' labor agreement, Arbitrator Boganno relied on the union's performance of historic unit work at various locations outside of the airport terminal in question to determine whether the union had a claim to the work performed outside of the location expressly identified in the recognition clause. *Id.* Those are simply not the facts on which this case stands. The Charging Party's citation to the decision in *St. Louis Symphony Society*, 106 LA 158 (Fowler, 1996) is also misplaced. In *St. Louis Symphony Society* the Arbitrator determined that the labor agreement between the parties applied to two separately incorporated corporations pursuant to the alter ego analysis, a concept that has no application to the stipulated record in this case. For similar reasons, the decision in *A.W. Zengeler*, 119 LA 1193 (Kohn, 2004) has no bearing on this matter. The Arbitrator in *A.W. Zengeler* determined that "the mere inclusion of a facility address in such definitional clause does not restrict the

collective bargaining agreement to a facility at that address." *Id.* at 14. Again, the recognition clause in Article 1 of the labor agreement in the instant dispute was not an independent basis for the Union's grievance.

The Charging Party's attempt to rely on *Rubbermaid Office Products*, 107 LA 161 (Alleyne, 1996) also fails. While *Rubbermaid Office Products* involves a successorship provision, the analysis was specific to the last clause of the provision binding a successor to the terms of the labor agreement regardless of "any geographical change in the location" of the "present place of business." *Id.* at 4. No such language exists in the successorship clause between the Parties in this case. *Rubbermaid Office Products* is simply not analogous. In sum, the Charging Party's reference to arbitration decisions interpreting recognition clauses are woefully lacking in any authority over this matter.

The Charging Party simply cannot escape the fact that despite Respondent's numerous requests for an explanation as to how the Salinas labor agreement and information on when and how the Salinas labor organization was selected is relevant to the transfer of work grievance, the Union failed to provide an explanation sufficient to trigger the Respondent's duty to respond to the request. The Union blankly alleged that it was entitled to the above-referenced information in order to evaluate and process the pending transfer of work grievance without providing any rationale for the connection between those requests and the contractual provisions cited in the transfer of work grievance. The Union's exceptions to the ALJ's decision are no different; the Union continues to blankly allege that it is entitled to the requested information.

The Union also continues to assert —without any reference to record evidence or case law— that it needed certain elements of the information request to assist it in the investigation of its ULP charge in case 13-CA-165495. But the only basis provided to the Respondent during

communications related to the information request, as correctly noted by the ALJ, was the work transfer grievance. Even if the Board found some merit to the Union's assertions that the requested information was necessary for the investigation of the ULP charge, that assertion still fails because it assumes there are documents that establish a ULP claim. Such a claim is baseless primarily because it is the General Counsel of the NLRB that has the primary responsibility for the investigation of ULP charges and it made no request for the items at issue in this matter during its investigation. Moreover, specific to this case, the Union's transfer of work ULP charge was fully investigated by Region 13 over a long period of time and subsequently dismissed. The Region obviously believed it had all the relevant information it needed to make a determination in case 13-CA-165495 and that it did not need the information at issue in the present case to do so. The Region's decision to dismiss the charge was upheld by the NLRB Office of Appeals (on the Union's motion for reconsideration) which apparently also felt the same way.

The ALJ correctly found that not only is the requested information not relevant because the ULP case is now closed but also because the requested information was submitted to the Respondent about six weeks after the charge was pending and "[i]t is well established that the Board's procedures do not include prehearing discovery." (ALJD 12). The Union does not dispute any of this. Instead, the Union now alleges that the General Counsel's decision not to issue a complaint in case 13-CA-165495 does not foreclose the Board's jurisdiction over whether the Union's representation rights under the agreement have been violated, citing to *Albertson's Inc.*, 124 LA 527 (Kaufman, 2007) for that proposition. (CP Brief 5–6, 10). Indeed, the transfer of work grievance is to be heard in arbitration before Arbitrator Robert Steinberg on November 1-3, 2017. Nonetheless, the Union simply cannot escape the fact that it has failed to establish how the exact number of the Salinas workers, the Salinas labor agreement, or how information

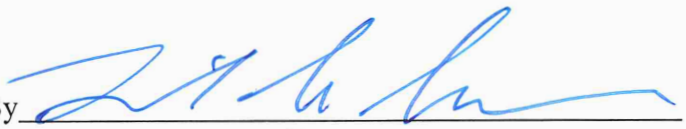
on when and how the Salinas labor organization was selected is relevant to its transfer of work grievance.

CONCLUSION

For all of the reasons set forth above and in Respondent's initial Brief to the ALJ, the Board should adopt the ALJ's Decision to dismiss the complaint in its entirety, affirming his finding that Respondent did not violate Section 8(a)(5) by refusing to provide all of the information requested by the Union in its January 27, 2016 letter.

DATED this 25th day of September, 2017

OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

By 

Richard L. Samson, Esq.
Norma Manjarrez, Esq.
155 North Wacker Drive - Suite 4300
Chicago, IL 60606
Phone: (312) 558-1220
Facsimile: (312) 807-3619

CERTIFICATE OF SERVICE

I certify that on September 25, 2017, a copy of the foregoing ***RESPONDENT'S ANSWERING BRIEF TO COMPLAINANT'S EXCEPTIONS TO ADMINISTRATIVE LAW JUDGE'S DECISION*** was Electronically Filed as a .pdf document via the NLRB's e-filing system and transmitted via e-mail to the following parties:

Vivian Robles
Counsel for the General Counsel
NATIONAL LABOR RELATIONS BOARD – Region 13
219 South Dearborn Street – Suite 808
Chicago, IL 60604
Vivian.robles@nlrb.gov

Gil Cornfield, Esq.
Elisa Redish, Esq.
CORNFIELD AND FELDMAN LLP
25 East Washington Street – Suite 1400
Chicago, IL 60602
gcornfield@cornfieldandfeldman.com
eredish@cornfieldandfeldman.com

One of the attorneys for Respondent

31331385.2